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## Iraq's Future 101: The Failings of the Baker-Hamilton Report

### *Strategic Insights*, Volume VI, Issue 2 (March 2007)

by [Brendan O'Leary](#)

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### Introduction

*The Iraq Study Group Report: The Way Forward—A New Approach*<sup>[1]</sup> is poorly researched, fails to appreciate the political consequences of the changes which have happened in Iraq since 2003, treats Iraq's constitution of 2005 with contempt, and yearns, for no good reasons, for a return to a highly centralized Iraq. Before establishing these propositions it is necessary to answer a prior question, namely, "Should time be invested in flogging a dead horse?"

After all, it is widely said that *The ISG Report* is politically extinct. One of the President's reported responses suggested he wanted it flushed away.<sup>[2]</sup> The prospects of the Group's major recommendations having purchase within Iraq are close to zero because it has been rejected in scorching language by the leaders of Kurdistan, and by significant Shi'a Arab leaders. *The ISG Report*, however, is not definitively dead. It is instead in a state of suspended occultation, like the Twelfth Imam. It will be resurrected, regularly, during the U.S. presidential primary campaigns. Major Democratic and Republican party candidates, who all need an Iraq policy, have already begun to cling to *The ISG Report* for fear of something worse. It enables presidential candidates to have plenty of distance from the current Administration without the need for a more thoughtful policy. Worse, *The ISG Report* is widely seen as the expression of judicious bi-partisan wisdom. For that reason alone American, European and Iraqi policy-makers need to be clear about *The ISG Report's* defects. The one merit of the future resurrection of *The ISG Report* is that may enable real debate to commence. The responsible debate on Iraq, for Americans, should not be between exponents of the *The ISG Report*, or immediate exit. Instead it should be between exponents of the federalization program in the constitution, and exponents of a controlled break-up. This is no easy choice. The inter-Arab civil war will accompany either option.

### What's in a Name?

*The Iraq Study Group* was not Iraqi, but American, written in American for Americans. There was no official Arabic or Kurdish translation. The two official languages of Iraq were equally "disrespected." In compiling its findings the Group visited Baghdad, or rather "the Green Zone,"<sup>[3]</sup> but not Iraq's only fully functioning and constitutionally authorized entity, namely the Kurdistan Region, and its official bodies, the Kurdistan Regional Government (KRG) and the elected Kurdistan National Assembly. This omission may explain why the KRG is not displayed on *The ISG Report's* map of Iraq's administrative divisions (see page 101). Some of America's wisest approved what may seem a careless act of cartographic ignorance. But the KRG's erasure from the map is better regarded as malice aforethought: it is in keeping with the temper of *The ISG Report*.

*The Iraq Study Group did not study* . No one relied on Vernon Jordan's grasp of Kurmanji or Sorani dialects of Kurdish, or Lawrence Eagleburger's appraisal of the different conceptions of the appropriate political role of Muslim jurists. No fresh social scientific research was commissioned to underpin this clearly written book, designed for the consumption of the educated public. There are no references to rigorous 'meta-research', i.e., evaluations of all research done on and in Iraq, policy sector by sector, since 2003. As in the best organized of conspiracies "if that were done, it was done quietly."

*The ISG Report was, lastly, not the work of a group* . Two Washington think-tanks and one Texas university are implicated in its contents. A range of experts—many of whom advised or worked in the Coalition Provisional Authority in 2003-4—are listed as having talked or deliberated in ways that helped the co-chairs and the group. It would be cruel, but not wholly false, to say that those who had learned nothing (i.e., members of the expert working groups) reported to those who know nothing (i.e., the members of the group). Soundings, as the English say, were taken with a serving British prime minister, two Presidents, past and presently distinguished secretaries of state and generals, and a range of other personages of high rank and title. Washington's elected elite, a sub-section of its academy, and some celebrity journalists had opportunities to 'participate'—as a patient participates with his dentist. All agree, however, that *The ISG Report*, allegedly a collective effort, and undoubtedly collectively agreed, is unmistakably 'authored' by James Baker III. The text bears all the characteristics of his techniques, and he fronted its preparations and its launch.

## What is its Nature?

*The ISG Report* suggests that its contents are a perfectly integrated whole; they must be taken as an entire package; their recommendations must not be cherry-picked. But even if all its recommendations were followed, which would be difficult because they are contradictory,<sup>[4]</sup> it would not tidy up America's policy predicament in Iraq. *The ISG Report* is not in the least realistic in several of its key prescriptions. Kurdistan's leaders and public think it is highly unrealistic. Reflective Americans strategists will think so too, after they extract themselves from whatever pain or pleasure they may derive from reading *The ISG Report's* searing indictments of existing U.S. policy. *The ISG Report's* historical importance is clear. It has been a mechanism through which the moderate and bi-partisan U.S. foreign policy establishment united to criticize the Bush II Administration's Iraq policies (plural, since no one thinks there has been just one, though some doubt there ever was any policy as such). *The ISG Report* commendably seeks to restore good order in American policy-making: in analysis and formulation, in civilian-military relations, and in the conduct of coherent diplomacy. That does not mean it is either realistic or right.

## Who is Being Unreal?

We are immediately told "There is no magic formula to solve the problems of Iraq" (see page 1). Who believes they possess such a formula? The President? The text bristles with undeclared contempt for neo-conservative unilateral adventurism. But, such neo-conservatives, now a beleaguered platoon, according to some, though still in control, according to others, are not the only targets. Also obliquely attacked are internationalist liberals who believe in principled humanitarian intervention against genocidal dictators, and 'democracy promotion' enthusiasts. *Sotto voce*, other are being attacked, namely the Iraqis who believed, and still believe, that Iraq might become a federal and pluralist democracy. Many of these Iraqis have a major grudge against James Baker III. After all, he decisively argued that Saddam should be left in power in 1991 after the first President Bush had encouraged the Kurds and Shi'a Arabs to rebel. Baker now reportedly says that no one asks him any longer why he did that.<sup>[5]</sup> If so, that is proof of consistency. Baker does not listen to representative Kurds and Shi'a Arabs, or follow their counsel, because they are disposable instruments in the realistic appraisal of America's interests. *The ISG Report* suggests, by implication that President George W Bush should have listened to

Baker, in the way that his father did. This last sentence now has widespread consent within informed American opinion, which has mostly turned strongly against America's intervention in Iraq. But Baker was wrong in 1991. Moreover he is wrong now, and it must be hoped that his errors do not become the new orthodoxy of American foreign policy.

## The Baker's Diagnosis

James Baker III's analysis of what is wrong in Iraq, unsurprisingly, gets the basics right. He is largely correct about the sources of violence. Its key driver has been a Sunni Arab insurgency, run by a network of networks, supplied primarily from within Iraq (perish the thought that Saudi quartermasters might matter). The insurgency aims at a Sunni restoration. *The ISG Report* does not quite say so, but that means the restoration to power of the formerly dominant minority. In these Sunni Arab insurgencies, Al-Qaeda in Mesopotamia, Baker rightly says, is a secondary player—and so is the 'foreign fighter', meaning Arab foreign fighter. *The ISG Report* gets right the character of sectarian violence, and the murderous responsibility of militias in both the Sunni Arab and Shi'a Arab communities. But it lacks the frankness to describe the conflict as an Arab civil war. The stability of parts of the south of Iraq is recognized, as is that of the Kurdistan Region, though it is not called that, but inaccurately described as "the three provinces of the Kurdish north," as if the Kurds owned the northern part of the compass, and as if the KRG neatly encapsulates three of Saddam's governance units.

Baker's thumbnail sketch of the perspectives widely held within each of the three major groups, i.e., Sunni Arabs, Shi'a Arabs and Kurds, is broadly correct, though it is egregiously insulting and misleading to treat the perspective of Kurds under "sectarian viewpoints." Kurds are a nation, not a sect, and comprise Sunni and Shi'a Muslims (including Alevis on some interpretations), Christians, Jews, Yezidis, agnostics and atheists.

As to the "key issues" in Iraq, Baker's diagnosis merits an "a g," an alpha gamma, the grade historically given in British universities to those who are extraordinarily bright but nevertheless make extremely foolish judgments. Three "key issues" are identified: federalism, Kirkuk, and governance. On the first, *The ISG Report* is against the federalism of Iraq's constitution, and claims, remarkably, that there is no economically feasible "Sunni region." That either suggests that any future such region has no oil—which is not true<sup>[6]</sup>—or that any such place is necessarily dependent on hand-outs from the rest of Iraq, which is both unproven and implausible. On the second, it says that Kirkuk is a powder-keg, and that the referendum on its final status should be postponed. It does not say until when. "For ever" is implied. On the third, it identifies four separate matters: (i) biased government by Shi'a, (ii) insecurity, (iii) rampant corruption, and (iv) the problems caused by the missing technocrats, lost in de-Ba'athification. No prizes for guessing what *The ISG Report* favors, namely unbiased government, security, clean government and bringing back Ba'athist technocrats—who, no doubt, know a lot about unbiased, secure and clean government.

There is, revealingly, no discussion of Islam or Islamist politics, though there is this remarkable gem, "The Saudis could use their Islamic credentials to help reconcile differences between Iraqi factions" (see page 48). These credentials are not specified, nor are the factions. For those who do not yet know, the House of Saud is the political and military wing of the Wahhabi sect. One of the first foreign policy excursions of that sect, in 1802, was an organized raid and looting of Karbala—the site of the martyrdom and burial of the Shi'a Imam Husayn. The House of Saud presently partially enforces Wahhabist doctrine, which deems most Sunnis and all Shi'a guilty of ignorance, *shirk* (attribution of partners to God), and innovation.<sup>[7]</sup> Wahhabism treats the Shi'a as apostates—the penalty for which is famously draconian. Wahhabi doctrine is hostile to the Naqshbandi Sufi tradition once vigorous in rural Kurdistan. It has no love of the Shafi'ite legal school prevalent among Sunni Kurds. It has low opinions of the Hanafite school that prevails among non-Kurds in the vicinity. It even rejects the Hanbali school from which its founder originated. In fact, it rejects all four Sunni schools of *fiqh*.<sup>[8]</sup> What exactly did Mr. Baker have in

mind regarding the conflict-resolution specialists among the Wahhabis? Quite why the Sunni Arabs of the Fertile Crescent—in their numerous rivalries—might accede to Saudi good offices is unknown—or undeclared. The Islamic credentials of the House of Saud might indeed be productive in reconciling differences among factions in Iraq. But perhaps only among particular fanatics, namely, Salafiyya, jihadists, and al-Qaeda. Even then it would not be a ‘slam dunk’, as the heads of U.S. intelligence agencies are wont to say of allegedly high probability outcomes. We must suspect that is not what Mr. Baker had in mind.<sup>[9]</sup>

## The Baker’s Medicine

Mr. Baker usefully distinguishes his external and internal prescriptions. Seeking an international consensus for stability in Iraq and in the region he suggests that Iraq’s neighbors and other players should form a ‘support group’. While what we may call the Fertile Crescent Violence Anonymous Group (FCVAG) is being formed, he commends that the United States should “engage” Syria and Iran, and directly address the ‘Arab-Israeli’ conflict—not, be it noted, the ‘Palestinian-Israeli’ antagonism. Commending a diplomatic and international multi-lateral engagement in the entire region is a return to previous wisdom—in which the snows of yesteryear appear to have survived the sun much better. Mr. Baker does not explain his commitment to what has been called “the Jerusalem syndrome,”<sup>[10]</sup> the idea that all roads to peace, stability and reasonably well-ordered states in the Middle East must go through Jerusalem, i.e., resolving the Israeli- Palestinian question. Nor does he explain, overtly, what the United States can offer Syria, Iran, Saudi Arabia, and Turkey, and why they should all co-operate over the future of Iraq, when they have not done so, so far, on their own. The U.S. President has certainly not immediately cherry-picked these proposals. Instead of a diplomatic opening to Syria and Iran the President increased oral threats, closed Iraq’s border with Iran, and allowed his officials to accuse Iran of directly supplying militias in Iraq. The Bush Administration has, however, more recently shown willingness to follow Iraqi initiatives to engage their neighbors in conference. Had it not done so that would have been a denial of Iraq’s sovereignty.

Internally, Baker commends that any increase in U.S. troops should be focused on having them “imbedded in and supporting” Iraqi Army units. The United States’ military mission should move to support rather than combat. The Army—and Marine—presence should be reduced and focused on al-Qaeda. The President has also not cherry picked these proposals. Instead we are in the middle of a “surge,” in which debate in Washington has focused on whether it is sufficiently surgical, and whether it should be supported or rejected in a non-binding show of resolution.

To obtain national reconciliation, security and governance Baker commended that ‘milestones’ be set for Iraq’s sovereign government. This idea has proven popular with both of Washington’s two political parties.

So, while Mr. Baker believes in tough love for the democratically elected government of Iraq, he believes in appeasement for its authoritarian neighbors—some of whom he credits with conflict-resolution skills. Such thinking is alleged to show the sophisticated mark of the realist, as opposed to that of a merely pragmatic lawyer. Such thinking is much less easily understood by mere idealists, who do not understand that foreign policy is not missionary work. Other detailed commendations—on criminal justice, the oil sector, reconstruction, the making of the U.S. budget, and the organization of U.S. intelligence follow, and that is it. What follows is confined to the constitutional high politics of *The ISG Report*.

## Did Mr. Baker Do His Homework?

Did Mr. Baker review other options? Yes, on pages 37-9 of *The ISG Report*, i.e., in about the same number of words as each of the attached resumes of the Study Group’s members. These were (1) Precipitate withdrawal; (2) Staying the course; (3) More troops for Iraq, and (4)



Devolution to 3 regions. *The ISG Report* says “No” to all of these options, though it is flexible on (3), enabling some to claim there is no fatwa in Baker-Hamilton against “the Surge.” *The ISG Report* hints that it is the word ‘precipitate’ which most offends sensibilities over option (1). *Quod erat demonstrandum*.

What was glaringly not assessed, and consequently drew controlled expressions of condemnation from the Presidents of the Kurdistan Region and of Iraq, was option (5), namely supporting the implementation of Iraq’s constitution. This option is not the same as option (2), and it is not compatible with option (4), though many, wrongly, think otherwise—because the constitution does not permit Baghdad to join any region, though it is entitled to become a region of its own.

Why this studied neglect? The answer is that *The ISG Report* is a full-frontal assault on Iraq’s constitution of 2005. It commends a course of action that would push the U.S. government completely to unravel Iraq’s constitution, which was endorsed by four of five of Iraq’s voters, a higher level of endorsement than that enjoyed by any attempts to change the constitution of Canada. While suggesting no changes in the constitutions of any of Iraq’s neighbors (let alone regime changes), *The ISG Report* treats the new democratic constitution of the United States’ Iraqi ally with contempt.

*The ISG Report* is a recipe for a constitutional *coup d’état*, but without local coup-leaders, for now. The prescription is terse, “The USG should support as much possible central control by governmental authorities in Baghdad, particularly on the question of oil revenues” (see page 39). It carefully does not say “within the limits of the constitution,” or “the rule of law”; it just says as “much possible central control.” “Go figure.”

Remarkably, *The ISG Report* claims that it offers a “new approach.” In fact it is no different from that promoted by L. Paul Bremer III before the making of the Transitional Administrative Law of 2004. It is an interesting anthropological fact that Americans with III after their names often have the same ideas. Perhaps they come from the same sect?

## In Defense of the Constitution of 2005

Mr. Baker seems to have forgotten obvious facts, even though he has doubtless been told them many times.

*One:* No successful negotiations could have materialized in 2005 from the comprehensive “inclusion” of Sunni Arabs in the making of Iraq’s constitution. The Sunni Arabs who were present in the Iraqi Assembly had demands that were completely unacceptable to their constitutional partners, the elected representatives of at least four fifths of Iraq’s population. The Sunni Arab political leaders who were absent had either boycotted the elections to the constitutional convention, or were supporting armed violence against the transitional government and its civilian supporters, or they were intimidated from indicating their willingness to compromise.

Any honest and informed observer will report that many Sunni Arabs, as a formerly dominant minority, remain strongly inclined to see Kurds and Shi’a as “special interests,” and as racial and religious inferiors respectively. They usually regard their own interests as identical with “Iraq’s.” The so-called “nation-state” of Iraq was after all built around them, so it is not surprising that many of them feel this way. They behave, in short, as if they are the “Staatsvolk,” the people who own the state. Apart from these dispositions, which unify them, Sunni Arabs are deeply internally divided—between Ba’athists, Islamists of every Sunni stripe, and traditional and neo-traditional tribes. They differ radically over means and goals—other than their adamant rejection of the new order. Not much has changed since the summer of 2005, except that Sunni Arabs are now suffering much more than in 2003-5. That is because of the actions of their own insurgents, who

have unleashed the hell of vigorous counter-cleansing against their own community. The U.S.-led 'surge', if successful, will prevent the Shi'a Arab militias from expelling Sunni Arabs from Baghdad. If successful it can be expected to generate astonishing levels of ingratitude all around.

*Two:* It is best if constitution-making (or renewal) and peace processes can go together, but sometimes it is not possible to have all good things concurrently. If no appeasement strategy that will pacify Sunni Arabs is acceptable to the leaders of the Kurds and Shi'a Arabs—even with their arms squeezed behind their backs—why does it make sense to look for one? What made Mr. Baker think there is a viable appeasement strategy? The limits of any such strategy are obvious. No strategy for appeasing Sunni Arabs is worth considering if it leads to an equal and opposite negative reaction in Kurdistan or among the Shi'a Arabs. Such a reaction has already occurred in response to Mr. Baker's report, which is not U.S. policy, though it is feared as a guide to future policy. Mr. Baker's implicit calculation must be that both Kurds and Shi'a Arabs can be squeezed to address Sunni Arab interests and demands. If that hypothesis gets tested only regrettable consequences will follow.

*Three:* Though it is true that a fully successful peace process in Iraq requires some significant Sunni Arab compliance with the new dispensation, nevertheless much of Iraq functions without that compliance, and more can do so in future. Kurdistan is institutionalized, and can flourish. The South is emergent and can function, despite its internal conflicts among parties and their militias. The South, by Iraqi law, will be able to form a region or several regions in 2008. Baghdad and the "ungoverned" governorates (Anbar, Nineveh, Salahaddin, and parts of Diyala) are the major violent problem-sites, so it is sensible that military and policing policy should focus on them, but only if such policies are part of a plausible political and constitutional strategy, i.e., one that minimally encompasses the new power-holders, Kurds and Shi'a Arabs.

As long as the key representatives of Sunni Arabs reject federalism the representative leaders of other communities will believe that Sunni Arabs harbor ambitions to be restored as the "Staatsvolk." When significant numbers of Sunni Arabs accept federalism, and consider that having their own self-governing region or regions, with a proportional stake in the federal government, is in their best interests, then we will know that the intra-Arab civil war is coming to an end. Mr. Baker's response, by contrast, is to commend the gutting of federalism, and to reward the Sunni Arab insurgents. Mr. Baker's proposes the restoration of centralism as the solution to Iraq's intra-Arab civil war. It is a solution to current Sunni Arab grievances, but it is neither a reasonable nor a stable solution. Mr. Baker is willing to risk deeply upsetting 80 percent of Iraqis to appease some of the 20 percent. Why, one is entitled to ask, is this called "realism"?

## **On Realist Nostalgia**

U.S. policy toward Iraq from 1980 to 1988 was to support a centralized Iraq (i.e., an Iraq in which the regionalist and democratic aspirations of Kurds and Shi'a Arabs were repressed). A centralized Iraq was considered necessary to balance revolutionary Iran, which it was feared would over-run the Persian Gulf, and the oil-rich pockets of Shi'a territory in the Arabian Peninsula. This thinking was complemented by the belief that America's ally, Turkey, needed constant re-assurance on its Kurdish predicaments. The broader appeasement of Sunni Arab interests equally favored a centralized Iraq, whether in propping up local client-regimes (Jordan), or in assuring most-favored client-regimes (Saudi Arabia). The end of the Iran-Iraq War, Saddam's invasion of Kuwait, and Gulf War 1, briefly interrupted the policy preference for a centralized Iraq. The United States was embarrassed into supporting a no-fly zone and a de facto autonomous Kurdistan, but, under James Baker III, and his successors in the Clinton Administration, it was resolved not to support either the break-up of Iraq or regionalist movements among the Shi'a Arabs. That was deemed likely to aid the expansion of Iranian power. James Baker would like to return to this world. But that cannot happen unless the United States decides to restore a Sunni Arab dominated regime to power.

The problem for the nostalgic Mr. Baker is that in the meantime Saddam Hussein's regime has been overthrown. The still extant U.S. policy-preference for a centralized Iraq has been irreversibly shattered by the (unintended) consequences of (unintended) "democracy promotion." No quick handover to a Sunni Arab general occurred after March 2003—as many feared, and some advocated. No interim government led by Ahmed Chalabi was immediately imposed—as some had hoped, and many had feared. Instead, there was an unplanned occupation, and under its auspices the Transitional Administrative Law was negotiated in the Spring of 2004, which framed the way Iraq's new, democratic, federal and pluralist constitution was made and ratified in the summer and fall of 2005.

In two Iraq-wide elections and one constitutional referendum the Kurdistan Alliance and the Shi'a led United Iraqi Alliance copper-fastened the end of a centralized Iraq. Kurdistan now has remarkable and constitutionally ratified levels of autonomy. If the constitution of Iraq of 2005 works Kurdistan will have greater legal autonomy within Iraq than has the average European state within the European Union. Kirkuk governorate may unify with Kurdistan this year after a referendum. The Constitution allows the nine Shi'a majority governorates outside Baghdad to choose to have one big region, or several regions, with the same powers as Kurdistan. Baghdad has the right to become a region, but not to join any other region. The remaining four governorates, in which there are Sunni Arab majorities, may choose to allow the federal government to have stronger powers over them than it has in the rest of Iraq, or they may opt to create between one and four regions with the same powers as Kurdistan. In brief, the constitution allows each existing province outside of Kurdistan to determine how centralized it wishes Iraq to be for it. A remarkable constitutional compromise.

There is not a word of recognition of any these constitutional facts in the *Baker-Hamilton Report*, which pines for a previous era, of a centralized Iraq. That Iraq gave the world wars with Kurdistan since the 1920s, culminating in genocidal massacres. That Iraq discriminated against its largest minority population (Kurds), and its largest majority community, Shi'a Arabs, culminating in *political* and genocidal repression of the Marsh Arabs. It was a centralized Iraq which joined the Nazis in World War II, and subsequently went to war with Israel, Iran, and Kuwait. *The ISG Report* nowhere observes that a centralized Iraq has not only been a present danger to its own peoples, but also to its neighbors.

*The ISG Report*, in short, fails to appreciate the seismic shift in the internal politics of Iraq unintentionally wrought by the two Bush Administrations. It is not just Kurds who want radical regionalization. Leading lights in SCIRI want a big South. Kurdistan's parties and SCIRI comprise the politically responsible and constructive forces in Iraq. Those who favor a centralized Iraq include Sunni Arabs, al-Qaeda in Mesopotamia, al-Sadr, the Bush II Administration, and the Baker-Hamilton authors and signatories. (There is, however, according to intelligence estimates in Kurdistan, and within SCIRI, no suggestion that these groups are working in concert).

## **The Unrealistic Blueprint for the Betrayal of Iraq's Constitution**

The textual contempt for Iraq's constitution in the *Baker-Hamilton Report* is made plain in pivotal commendations. Its Recommendation 26 argues for UN involvement in a review of Iraq's constitution. Ah, what a fresh outbreak of multilateral internationalism. Who could quarrel with that? But the UN has no role to play in any review process, according to Iraq's constitution. What would the United States think if a report of retired politicians and judges in another country commended the UN's role in a review of the U.S. Constitution, particularly its clauses on the Electoral College, states' rights, and natural resources?

*The ISG Report's* Recommendation 27 extols the "reintegration of Ba'athists and Arab nationalists into national life."<sup>[11]</sup> But the constitution carefully distinguishes Saddamite Ba'athism from Ba'athism, enabling exponents of the latter to have political existence. By "Arab nationalists"



does the *Baker-Hamilton Report* mean Arabs? In which case, are they suggesting that Shi'a Arabs are not Arab nationalists? Or, do they mean "pan-Arab" nationalists, who advocate that Iraq should merge with other Sunni-Arab majority states? And, what exactly do they mean by "national life"? After all, the constitution recognizes Iraq as a country of many nationalities. Again one might wonder how Americans would react to a team of retired politicians and former judges in a foreign country who commended that the United States re-habilitated in its national life the Klu Klux Klan, slave-holders, and supporters of British rule in the American colonies.

*The ISG Report's* Recommendation 28 is that oil revenues should accrue to "the central government" (*sic!*), i.e., it does not recognize that Iraq has a federal, not a central government. It declares "No formula that gives control over revenues from future fields to the regions or gives control of oil fields to the regions is compatible with national reconciliation." But this is just not true. The existing constitutional formula guarantees that revenues from currently exploited fields must be allocated across Iraq on a per capita basis, and it does not prevent regions, which unambiguously control revenues from future fields, from agreeing to share revenues with the rest of Iraq. That is in fact what Kurdistan's leaders have proposed, and is currently being drafted as law—which suggests that this formula is indeed possible. Not only does the *Baker-Hamilton Report* peddle a falsehood, it nowhere recognizes that the decentralization of ownership and control over natural resources is an excellent formula for weakening a despotic and corrupt political center.<sup>[12]</sup> We should charitably leave to one side the fact that the non-existence of centralized control and ownership of natural resources in the U.S. Constitution has apparently been compatible with public spiritedness among Texans in the land of the free and the home of the brave.

Recommendation 30 asserts that the Kirkuk referendum be postponed, that international arbitration be sought, and that the question of Kirkuk be placed on the agenda of the Iraq Support Group (FCVAG). There is, deliberately, no provision in Iraq's constitution that permits the postponement of the Kirkuk referendum. International assistance in encouraging mutual confidence among Kirkuk's communities of Kurds, Turkomen, Arabs, Chaldeans and Assyrians is doubtless welcome, but binding arbitration would be by whom, and over what questions? And, exactly how will respect for Iraq's territorial integrity be advanced by giving its neighbors (Syria, Turkey and Iran) a say in Iraq's internal procedures for establishing its internal regional boundaries? Does Baker-Hamilton propose reciprocity, namely that the Foreign Minister of Iraq, who happens to be a Kurd, should have a stake in the internal structures of regional and local government in Iran, Turkey and Syria? The answer, regrettably, is "No." Iran, Turkey and Syria, should be engaged diplomatically both by Iraq and by the United States, but one would have thought the right premises for such engagements would be respect for Iraq's territorial integrity and its constitution, rather than offering the heads of Kurdistan's political leaders and their people's aspirations on a plate. *The ISG Report* never considers whether denying a referendum in Kirkuk may cause as many and potentially worse problems as implementing Iraq's constitutional provisions. Nor whether encouraging Turkish irredentism or aggression—and legitimizing Turkey's interests in the internal affairs of Iraq—may be as foolish as anything done by the Bush Administration. Sadly, and perhaps not deliberately, the *Baker-Hamilton Report* does not recognize the carefully crafted constitutional compromise on Kirkuk. Because Kirkuk's oil-field is a currently exploited field it automatically follows that its revenues are constitutionally guaranteed for allocation across Iraq as a whole. The oil-benefits from Kirkuk, in short, are not for Kurdistan alone, wherever Kirkuk ends up. Kurdistan's and SCIRI's negotiators have already sensibly de-coupled controversies over Kirkuk's oil field from the territorial status of the governorate and the city.<sup>[13]</sup>

The correct U.S. and international policy on Kirkuk would be to ensure that the provisions on Kirkuk, and the other disputed territories, are implemented fairly, and to encourage the Kurdistan Government's plans to have a power-sharing government in Kirkuk. The data from the two elections in 2005 and on the constitutional referendum in the same year show that a majority in Kirkuk governorate favor joining Kurdistan. Affirmative support on unification with the Kurdistan

Region will only be enhanced by the constitutional provisions enabling the expelled to return to vote, and preventing Saddam's settlers from having the right to vote on the territorial status of the governorate. It will also be enhanced by the fact that Kurdistan's security is remarkably better than anywhere else in Iraq—which will encourage some Christians, Turkomen and Arabs to prefer the KRG to the status quo. A U.S. engagement with Turkey, which emphasized Turkey's interests in a stable Kurdistan inside a stable federal Iraq, and which re-assured Turkey that the Turkomen would be treated fairly, is what is patently required. Instead Mr. Baker's *ISG Report* has given fuel to every nostalgic Kemalist in Turkey's military—a stunningly incompetent and de-stabilizing stance.

In any case, *none* of Baker's recommendations for changes in Iraq's constitution are feasible, except through a coup. Constitutional amendments in Iraq require, in effect, the support of those who made the constitution, and have to be enacted under the same procedures through which the constitution was made, namely "a majority of the voters" must agree, and the amendments "must not have two-thirds of the voters in three or more governorates rejecting." Moreover, as an established region, Kurdistan may veto any change affecting its powers (Art. 126 (4) blocks amendments to the constitution that weaken regions' competences unless the region's parliament and people consent).

### **Authentic Realism, American Values, and Iraq's Constitution**

Any realistic appraisal of contemporary Iraq, political and military, will report that it is divided into four parts: Kurdistan (including Kirkuk), Baghdad, the Sunni Arab triangle, and the South. Politically, Sunni Arab elites, *jihadi* religious fanatics and the Sadrists cling zealously to the vision of a centralized Iraq. It follows that supporting a pluralist and radically de-centralized federation has a good chance of weakening both the Ba'athists and the Sadrists. From the perspective of American interests and values it is the 'reasonables' who want a pluralist and de-centralized federation, and they have the constitutional warrant to proceed. This approach is not to commend the wholesale exclusion of Sunni Arab interests (which would merely mirror Mr. Baker's exclusion of those of the Shi'a Arabs and Kurdistan's). Under the constitution Sunni Arabs, provided they take advantage of its provisions, have the right to self-government in any region they organize, including control over local security. They have the right to a per capita share of oil revenues from Iraq's current fields; and they have decent prospects of further finds of oil and natural gas in their localities. The constitution recognizes Iraq's membership of Arab League; and, rightly interpreted, imposes no rival version of Islam on their territories. Through proportional representation their parties are entitled to fair representation in federal institutions. Other minorities elsewhere in the world die—and kill—for such arrangements. The point is that Sunni Arabs are not maltreated by the constitution of 2005, and Baker's report has therefore fed the numerous tissues of misrepresentation of these matters. The *Baker-Hamilton Report* has encouraged the "one more surge" mentality among Sunni Arabs. In so doing, far from being realistic, it has re-kindled magical thinking. Whereas Baker-Hamilton offers a three-way civil war, throwing Kurdish fat on to the fire, with invitations issued to the neighbors to enjoy the feast and to do the washing up, Iraq's constitution offers both the prospects of a widely agreed Iraq through full-scale regionalization, and the prospect of a controlled and honorable exit for the United States and its remaining allies.

### **About the Author**

Brendan O'Leary is Lauder Professor of Political Science at the University of Pennsylvania, where he co-directs its Solomon Asch Center. In 2004 and 2005 he was seconded to Kurdistan where he acted as an international constitutional advisor to the Kurdistan Regional Government during the making of the Transitional Administrative Law (2004) and the Constitution of Iraq (2005). He is the lead editor of *The Future of Kurdistan in Iraq* (University of Pennsylvania Press, 2005), described by the Times Higher Education Supplement as "an outstanding collection which illustrates the virtue of academic engagements with current predicaments".

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## References

1. James A Baker III and Lee H Hamilton, [The Iraq Study Group Report: The Way Forward—A New Approach](#) (New York: Vintage Books, 2006.)
2. "Informed correspondents" of the *Washington Post* and the *New York Times* relay an allegedly colorful remark by the President (Sidney Blumenthal, ["Shuttle without Diplomacy,"](#) *Salon.com*, January 10, 2007.
3. For those who have not had the pleasure of perambulation in Baghdad, Rajiv Chandrasekaran provides an accurate guide to the surreal character of the Green Zone, *Imperial Life in the Emerald City: Inside Iraq's Green Zone* (New York: Alfred A. Knopf, 2006).
4. Here are just a few contradictions and tensions in [The ISG Report](#): (1) 'The [Foreign] Support Group would not seek to impose obligations or undertakings on the government of Iraq' (see page 47). So, what about the incentives, and the milestones to be imposed on the Maliki-led government by the U.S. and its coalition partners? (2) The violent conflict in Iraq is characterized as primarily internal, but, if so, why is so much of [The ISG Report's](#) focused on the neighboring states, and their behavior, which affects Iraq's security? (3) [The ISG Report](#) commends engaging Iran, whose President does not recognize Israel, and talking to everyone (except al-Qaeda) in Iraq, including those who agree with Iran's President, but does not want the U.S. engaging Hamas until it recognize Israel. (4) It commends Israel to give up the Golan Heights in return for U.S. guarantees ("What's that got to do with Iraq?" you may ask). Israelis may well ask what is a U.S. guarantee worth from Mr. Baker. Are they the next to receive guarantees from this man, after the Kurds and the Shi'a Arabs? Would you take a guarantee from a self-declared realist?
5. See James Baker III (with Steve Fiffer), *Work Hard, Study... and Keep out of Politics: An Unexpected Public Life* (Putnam, 2006), and Michael Tomasky, ["Better Late Than Never,"](#) *New York Review of Books* 51, 1, January 11, 2007.
6. *The New York Times* is now reporting on Iraq's oil question in ways which contradict its editorial opinion pieces, see James Glanz, ["Iraqi Sunni Lands Show New Oil and Gas Promise,"](#) February 19, 2007, A1. The fact of significant unexploited oil and gas in Sunni Arab dominated areas has been known for some time, but is typically not believed when stated by ministers from Kurdistan or the United Iraqi Alliance. I call this the myth that "the constitution of 2005 left Sunni Arabs a diet of sand and the Koran." For an example of belief in this myth see James Fearon's reference to the "oil-poor patch of western Iraq" apparently left to Sunni Arabs by the constitution, ["Iraq's Civil War,"](#) *Foreign Affairs*, March-April 2007.
7. For one exposé of Wahhabist doctrine by an Islamic scholar see Hamid Algar, *Wahhabism: A Critical Essay* (Oneonta, NY: Islamic Publications International, 2002).
8. For a comprehensive treatise and treatment of historic Islamic political thought in English see Patricia Crone, *God's Rule: Government and Islam* (New York: Columbia University Press, 2004).
9. Some readers may detect a subtle joke. After all, the House of Saud has tarnished Islamic credentials. At home, it is accused of diverting Wahhabism from jihad, and indulging sultan-esque pleasures amid its numberless princes. To appease its domestic religious critics, it exports

Wahhabism abroad as religiously as it exports its oil—as American policy-makers appreciate. I prefer to believe there are limits to the subtlety of the required hermeneutics of Baker and the House of Saud—we are discussing realism after all.

10. Andre Glucksman, "[The Jerusalem Syndrome](#)," *Figaro*, August 8, 2006, translated in *Sign and Sight*, August 10, 2006.

11. The same phrasing is used by [Larry Diamond](#), see note 13 below.

12. For an attempt to provide a careful construction of the meanings of the provisions governing natural resources in Iraq's constitution of 2005 see Brendan O'Leary, 2007, "Federalizing Natural Resources," In Ben Roswell, David Malone and Markus Bouillon, eds., *Iraq: Preventing Another Generation of Conflict* (Boulder CO: Lynne Rienner Press). The oil, gas and water clauses are both politically and morally defensible. They do not exclude or exploit Sunni Arabs, and they are entirely compatible with statutory agreements to share revenues from new fields. The remarkable facts of the Kirkuk compromise are also spelled out.

13. Larry Diamond, who advised both the ISG, and the CPA, appears to have learned nothing on these matters. He declares that "the constitution [of 2005] must be rewritten to lodge current and future control over oil fields and revenues clearly with the central (*sic!*) government"; supports an end to de-Ba'athification, and wants the Kirkuk referendum deferred and internationally arbitrated. He appears to think that an affirmative referendum would mean the Kirkuk oilfield and its proceeds goes to Kurdistan, period (Larry Diamond "[Only Connect](#)," *Foreign Affairs*. Like the ISG, Diamond does not explain how any of this might be done. Does he mean that the existing constitution must be shredded? The idea that the only way to get a per capita oil distribution formula is through constitutional rather than statutory change is simply mistaken (see note 12). Diamond portrays the constitution of 2005 as an organized conspiracy of Kurds and Shi'a Arabs against Sunnis, rather than as an organized political movement against America's policy preferences for a centralized Iraq, and rather helplessly calls for the problems of Iraq to be "globalized."